

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

NICHOLAS HARPER	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	
	§	CIVIL ACTION NO.4:18-CV-001562
CITY OF MISSOURI CITY, MIKE	§	JURY DEMANDED
BEREZIN, GREG T. NELSON,	§	
M.B. WILEY,	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Nicholas Harper [“Plaintiff”] files this his first amended complaint<sup>1</sup>, and respectfully comes before this Honorable Court complaining pursuant to 42 U.S.C. § 1983 that Defendants herein (1) acted under color of state law in a deliberately indifferent manner, (2) denied Mr. Harper his right to be free from excessive force while knowingly depriving him of due process, (3) deprived Nicholas Harper of his clearly established constitutional rights to (a) remain free from excessive force, and (b) due process, and (c) cruel and unusual punishment, and (4) that Defendant’s

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<sup>1</sup> The Plaintiff's original complaint was filed on May 14, 2018.

actions caused decedent's injuries. These claims are brought under the Fourth and Fourteenth Amendment of the United States Constitution claim, illegal search and seizure, excessive force, equal protection, inadequate medical care, and Monell claims against Defendants, Wiley, Nelson, Berezin, and City of Missouri City (collectively "City Defendants"). The action brought by the Plaintiff pursuant to 42 U.S. C. §1983, § 1985, § 1988, and Texas State Law. In support thereof, Plaintiff specifically alleges the following:

### **PARTIES**

1. Plaintiff Nicholas Harper is and was at all times relevant hereto an individual residing in the State of Texas.
2. Defendant, City of Missouri City Texas is a municipality located in Texas. It may be served with process by serving its Mayor Allen Owen.
3. Defendant, Greg T. Nelson, 1410 Williams Way Blvd., Richmond, TX 77469, sued herein in his individual capacity.
4. Defendant, M.B. Wiley, 3849 Cartwright Rd., Missouri City, TX 77489, sued herein in his individual capacity.
5. Defendant, Mike Berezin, 3849 Cartwright Rd., Missouri City, TX 77489, sued herein in his individual capacity.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction to hear the merits of Plaintiff's claims under 28 U.S.C. § 1331 and 1343(a) (3) and (4) because Plaintiff's suit arises under 42 U.S.C. § 1983.

7. This Court also has jurisdiction to hear the merits of Plaintiff's claims regarding the Americans with Disabilities Act under 42 U.S.C.A. §§ 12132 and 12133, 28 U.S.C. § 1331.

8. Venue is proper under 28 U.S.C. § 1391(b) because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Southern District of Texas, Houston Division.

9. All conditions precedent have been performed or have occurred.

**NATURE OF THE ACTION**

10. Defendants deprived Mr. Harper of his rights to: (a) remain free from excessive force; (b) remain free from arbitrary punishment; and (c) protection.

11. This suit arises under the Constitution of the United States (particularly the Fourth and Fourteenth Amendments to the Bill of Rights), 42 U.S.C. § 1983.

**FACTS**

12. On May 14, 2016, Mr. Harper was apprehended by Officer M.B. Wiley, and Officer Greg Nelson of the Missouri City Police department (MCPD), in Missouri City, Texas.

13. Mr. Harper was driving a faulty vehicle that he borrowed from a friend. The vehicle was having mechanical problems.

14. He was unable to stop although he applied the brakes.

15. The vehicle Mr. Harper was operating began to accelerate instead of stopping, causing Mr. Harper to panic.

16. The vehicle crashed and only then did the vehicle stop.

17. Once the vehicle came to a stop, Mr. Harper was disoriented but he became concerned that the vehicle would explode, since he smelled gas, so he quickly moved away from the crashed vehicle.

18. The officers never once tried to offer Mr. Harper assistance medical or otherwise check on him after he escaped the vehicle.

19. The officers immediately apprehended Mr. Harper once he moved away from the car by deploying a taser and using the taser to effectuate a drive stun maneuver.

20. After tasing Mr. Harper, which caused his body to move involuntarily. Officer Wiley began to strike Mr. Harper repeatedly with his taser in the back of his head.

21. Harper was compliant, not resisting and was not a threat of harm to anyone around.

22. As Mr. Harper was complying with the officers, making no attempts to resist or flee thus not being a threat to the officers at this time, Defendant Wiley's struck Mr. Harper in the back of his head.

23. The blows by Wiley to the back of Mr. Harper's head were so vicious severe that they caused bleeding, bruises, cuts, and an open gash to the back of his head.

24. At the time of his arrest with serious injuries to his head, Mr. Harper was booked into the Missouri City Jail. Placing him in the jail without medical attention put him at high risk for concussion.

25. While in the Missouri City Jail he received no medical care, even though he had an obviously bleeding head wound along with cuts and bruises.

26. The next morning, Mr. Harper taken from Missouri City jail to the Fort Bend County Jail.

27. At the intake the Fort Bend County Jail medical department refused to accept Mr. Harper into custody, due to his multiple injuries.

28. These injuries were the same untreated injuries he suffered the night before.
29. The Missouri City Jail provided no treatment for nor did they attempt to bring Mr. Harper the hospital for his serious and obvious medical needs.
30. After Fort Bend County jail refused to accept Mr. Harper into its custody, Mr. Harper was taken to the local hospital, treated, and released to the custody of MCPD.
31. Mr. Harper was then taken back to the Fort Bend County Jail.
32. Defendant, Chief Mike Brezin failed to train his officers how not to commit excessive force against suspects who are compliant, not attempting to flee or resist , thus creating no threat of harm to the officers involved.
33. Chief Brezin also failed to train his officers to render aid to a suspect who is injured based on the excessive force used against them, and intentional or purposeful discrimination acts based on race.
34. Lastly Chief Brezin failed to train his officers to intervene when they witness another officer utilizing excessive force against suspects who are compliant, not attempting to flee or resist , thus creating no threat to the officers involved.
35. There was an internal affairs investigation that followed, which was closed and lead to no discipline.

36. There was multiple request made pursuant to the public information act, for a copy of the video, and internal affairs report, but Defendant, City of Missouri City has failed to respond to the request for information.

37. After the excessive force Mr. Harper suffered headaches, blurred vision and bone pain, all as a result of the use of force.

38. He was diagnosed with multiple injuries.

39. He had follow-up visits while in the Fort Bend County Jail for treatment based on the injuries he sustained as a result of the excessive force.

40. He continues to need medical care, and has suffered memory loss as a result of the defendants egregious actions.

41. Mr. Harper suffered permanent damage to his head, scalp, and brain.

42. He now has physical impairment along with agonizing headaches, since the assault.

43. The reckless acts against Mr. Harper were made with deliberate indifference and Missouri City has not only shielded the Officers Wiley and Nelson from criminal prosecution it has concealed the details of the actions by failing to respond to open records request made on behalf of Mr. Harper.

44. Mr. Harper is a 25 year old black man, who posed no threat of harm to the officers, or the public, yet use of force was employed against him in violation of clearly established law.

45. Plaintiff Nicholas Harper is a 26 year old, African American male, at the time of his arrest, and became subject to the discriminatory practices of the City of Missouri City, its policy makers, and officers when he was struck and beaten until he bled and needed emergency medical care.

46. Mr. Harper filed his original complaint on May 14, 2018, exactly two years from the date of his arrest on May 14, 2016. He was unable to obtain all the information to file the suit sooner since the information was being wrongfully withheld by The City of Missouri City.

***Past MCPD Police Use of Force by Officers, and failure to train officers in when to utilize the use of force while on duty, amounted to deliberate indifference by The city of Missouri City***

47. City of Missouri City through its policymaker Brezin condoned and cultivated a culture of using excessive force against African Americans.

48. In 2015 the Missouri City Police Department reported 123 Use of Force incidents. Out of those 123 Use of Force Incidents 80 of them were utilized against

African-Americans. The use of force was determined to be justified after a department investigation.

49. On January 2, 2015 an Officer with the Missouri City Police Department , utilized use of force against a 44 year old African American male by utilizing the Hard Hands technique. The use of force was determined to be justified after a department investigation.

50. On January 21, 2015 an Officer with the Missouri City Police Department, utilized use of force against a 17 year old African American male in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

51. On January 21, 2015 an Officer with the Missouri City Police Department, utilized use of force against a 15 year old African American male in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

52. On January 27, 2015 an Officer with the Missouri City Police Department utilized use of force against a 19 year old African American male, in the form of first grabbing him and then pointing the firearm at him. The use of force was determined to be justified after a department investigation.

53. On February 1, 2015 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of first doing a ECW drive stun and then grabbing him. The use of force was determined to be justified after a department investigation.

54. On February 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 41 year old African American male, in the form of a ECW Threat. The use of force was determined to be justified after a department investigation.

55. On February 25, 2015 an Officer with the Missouri City Police Department utilized use of force against a 47 year old African American male, in the form of pointing his firearm at him. The use of force was determined to be justified after a department investigation.

56. On February 25, 2015 an Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

57. On February 26, 2015 an Officer with the Missouri City Police Department utilized use of force against a 38 year old African American female, in the form of grabbing her. The use of force was determined to be justified after a department investigation.

58. On March 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male, in the form of pointing his firearm at him. The use of force was determined to be justified after a department investigation.

59. On March 10, 2015 an Officer with the Missouri City Police Department utilized use of force against a 31 year old African American male, in the form of

pointing his firearm at him. The use of force was determined to be justified after a department investigation.

60. On March 13, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male, in the form of pointing his firearm at him. The use of force was determined to be justified after a department investigation.

61. On March 13, 2015 an Officer with the Missouri City Police Department utilized use of force against a 14 year old African American male, in the form of pointing his firearm at him. The use of force was determined to be justified after a department investigation.

62. On March 15, 2015 an Officer with the Missouri City Police Department utilized use of force against a 26 year old African American male, in the form of pointing his firearm at him. The use of force was determined to be justified after a department investigation.

63. On March 25, 2015 an Officer with the Missouri City Police Department utilized use of force against a 21 year old African American male, in the form of the hard hands technique. The use of force was determined to be justified after a department investigation.

64. On April 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 35 year old African American male, in the form of threatening him with the use of ECW. The use of force was determined to be justified after a department investigation.

65. On April 21 , 2015 an Officer with the Missouri City Police Department utilized use of force against a 15 year old African American male, in the form of threatening him with the use of ECW and then handcuffs. The use of force was determined to be justified after a department investigation.

66. On April 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 36 year old African American male, in the form of ECW deployment. The use of force was determined to be justified after a department investigation.

67. On April 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male, in the form of pointing his firearm. The use of force was determined to be justified after a department investigation.

68. On April 27 , 2015 an Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the form of using the hard hands technique. The use of force was determined to be justified after a department investigation.

69. On April 27 , 2015 an Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the form of deploying the ECW. The use of force was determined to be justified after a department investigation.

70. On April 27 , 2015 an Officer with the Missouri City Police Department utilized use of force against a no age listed African American male, in the form of

deploying the ECW. The use of force was determined to be justified after a department investigation.

71. On May 7, 2015 an Officer with the Missouri City Police Department utilized use of force against a 25 year old African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

72. On May 7, 2015 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of the hard hands technique. The use of force was determined to be justified after a department investigation.

73. On May 13, 2015 an Officer with the Missouri City Police Department utilized use of force against a 27 year old African American female, in the form of threatening use of a ECW device and displaying a firearm. The use of force was determined to be justified after a department investigation.

74. On May 17, 2015 an Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

75. On May 19, 2015 an Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

76. On May 19, 2015 an Officer with the Missouri City Police Department utilized use of force against a African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

77. On May 21, 2015 an Officer with the Missouri City Police Department utilized use of force against a 43 year old African American male, in the form of deploying a ECW device. The use of force was determined to be justified after a department investigation.

78. On May 21, 2015 an Officer with the Missouri City Police Department utilized use of force against a 43 year old African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

79. On May 27, 2015 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

80. On June 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 21 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

81. On June 6, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American female, in the form of

threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

82. On June 10, 2015 an Officer with the Missouri City Police Department utilized use of force against a 15 year old African American male, in the form of the use of a ECW device for a drive stun. The use of force was determined to be justified after a department investigation.

83. On June 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

84. On June 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 16 year old Black Person, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

85. On June 28, 2015 an Officer with the Missouri City Police Department utilized use of force against a 26 year old African American male, in the form of grabbing him. The use of force was determined to be justified after a department investigation.

86. On July 7, 2015 an Officer with the Missouri City Police Department utilized use of force against a 21 year old African American male, in the form of deploying a ECW device. The use of force was determined to be justified after a department investigation.

87. On July 8, 2015 an Officer with the Missouri City Police Department utilized use of force against a 35 year old African American male, in the form of deploying a ECW device. The use of force was determined to be justified after a department investigation.

88. On July 8, 2015 an Officer with the Missouri City Police Department utilized use of force against a 35 year old African American male, in the form of threatening use of a ECW device and then utilizing a ECW to perform a drive stun. The use of force was determined to be justified after a department investigation.

89. On July 12, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

90. On July 21, 2015 an Officer with the Missouri City Police Department utilized use of force against a 38 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

91. On July 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 19 year old African American male, in the form of using the pressure point technique and following that up by threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

92. On July 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 19 year old African American female, in the form of

using the using a ECW device to effectuate a drive stun t and following that up by the officer grabbing the woman. The use of force was determined to be justified after a department investigation.

93. On July 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 19 year old African American female, in the form of using the pressure point technique. The use of force was determined to be justified after a department investigation.

94. On August 15, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American female, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

95. On August 18, 2015 an Officer with the Missouri City Police Department utilized use of force against a 28 year old African American male, in the form of tackling. The use of force was determined to be justified after a department investigation.

96. On August 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 27 year old African American male, in the form of arm and then a performing a leg sweep. The use of force was determined to be justified after a department investigation.

97. On August 22, 2015 an Officer with the Missouri City Police Department utilized use of force against a 27 year old African American male, in the form of arm and then a performing a drive stun with a ECW device. The use of force was determined to be justified after a department investigation.

98. On August 23, 2015 an Officer with the Missouri City Police Department utilized use of force against a 48 year old African American male, in the form of using the baton. The use of force was determined to be justified after a department investigation.

99. On August 23, 2015 an Officer with the Missouri City Police Department utilized use of force against a 49 year old African American male, in the form of grabbing him. The use of force was determined to be justified after a department investigation.

100. On August 23, 2015 an Officer with the Missouri City Police Department utilized use of force against a 34 year old African American male, in the form of grabbing him. The use of force was determined to be justified after a department investigation.

101. On August 23, 2015 an Officer with the Missouri City Police Department utilized use of force against a 34 year old African American female, in the form of grabbing her. The use of force was determined to be justified after a department investigation.

102. On August 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a African American male no age provided, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

103. On August 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of

displaying a firearm. The use of force was determined to be justified after a department investigation.

104. On September 12, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

105. On September 15, 2015 an Officer with the Missouri City Police Department utilized use of force against a 37 year old African American male , in the form of threatening the use of a ECW device and handcuffs. The use of force was determined to be justified after a department investigation.

106. On September 18, 2015 an Officer with the Missouri City Police Department utilized use of force against a 21 year old African American male , in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

107. On September 21, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male , in the form of utilizing both the arm and pressure points techniques. The use of force was determined to be justified after a department investigation.

108. On September 21, 2015 an Officer with the Missouri City Police Department utilized use of force against a 27 year old African American male , in the form of displaying a firearm and grabbing the man. The use of force was determined to be justified after a department investigation.

109. On October 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 32 year old African American male , in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

110. On October 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 32 year old African American male , in the form of flashlight and utilizing the pressure point technique. The use of force was determined to be justified after a department investigation.

111. On October 3, 2015 an Officer with the Missouri City Police Department utilized use of force against a 32 year old African American male , in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

112. On October 12, 2015 an Officer with the Missouri City Police Department utilized use of force against a 19 year old African American male , in the form of displaying a firearm and threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

113. On October 16, 2015 an Officer with the Missouri City Police Department utilized use of force against a 60 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

114. On October 19, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of

executing a drive stun with a ECW device. The use of force was determined to be justified after a department investigation.

115. On November 6, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male , in the form of utilizing the arm technique. The use of force was determined to be justified after a department investigation.

116. On November 6, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male , in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

117. On November 7, 2015 an Officer with the Missouri City Police Department utilized use of force against a 30 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

118. On November 14, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male , in the form of grabbing him. The use of force was determined to be justified after a department investigation.

119. On November 15, 2015 an Officer with the Missouri City Police Department utilized use of force against a 38 year old African American female , in the form of grabbing him. The use of force was determined to be justified after a department investigation.

120. On November 28, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American female , in the form of using the arm technique. The use of force was determined to be justified after a department investigation.

121. On November 28, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of using the arm technique and grabbing him. The use of force was determined to be justified after a department investigation.

122. On November 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

123. On November 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 32 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

124. On November 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

125. On November 30, 2015 an Officer with the Missouri City Police Department utilized use of force against a 32 year old African American male , in the form of

pointing a firearm at him. The use of force was determined to be justified after a department investigation.

126. On December 4, 2015 an Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male , in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

127. On December 8, 2015 an Officer with the Missouri City Police Department utilized use of force against a 29 year old African American male , in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

128. On December 9, 2015 an Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male , in the form of pointing a firearm at him. The use of force was determined to be justified after a department investigation.

129. On December 10, 2015 an Officer with the Missouri City Police Department utilized use of force against a 35 year old African American female , in the form of deploying of a ECW device. The use of force was determined to be justified after a department investigation.

130. On December 20, 2015 a Officer with the Missouri City Police Department utilized use of force against a African American male no age provided, in the form of grabbing and hobbling him. The use of force was determined to be justified after a department investigation.

131. In 2016 the year that this incident happened the Missouri City Police Department reported 180 Use of Force incidents. Out of those 180 Use of Force Incidents 112 of them were against African-Americans. The use of force was determined to be justified after a department investigation.

132. On January 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American female, in the form of pointing a firearm at her. The use of force was determined to be justified after a department investigation.

133. On January 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American female, in the form of displaying a firearm. and handcuffs. The use of force was determined to be justified after a department investigation.

134. On January 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American female, in the form of using the firearm. The use of force was determined to be justified after a department investigation.

135. On January 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 61 year old African American female, in the form of displaying a firearm and handcuffs. The use of force was determined to be justified after a department investigation.

136. On January 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American female, in the form of

displaying a firearm. The use of force was determined to be justified after a department investigation.

137. On January 13, 2016 a Officer with the Missouri City Police Department utilized use of force against a 33 year old African American female, in the form of pointing a firearm at her. The use of force was determined to be justified after a department investigation.

138. On January 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

139. On January 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 28 year old African American male, in the use of force that the department describes as other. The use of force was determined to be justified after a department investigation.

140. On January 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 28 year old African American male, in the use of force that the department describes as other. The use of force was determined to be justified after a department investigation.

141. On January 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 28 year old African American male, in the use of force that the department describes as other. The use of force was determined to be justified after a department investigation.

142. On January 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male, in the use of force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

143. On January 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 28 year old African American male, in the use of force that the department describes as displaying a firearm. The use of force was determined to be justified after a department investigation.

144. On January 20, 2016 a Officer with the Missouri City Police Department utilized use of force against a 15 year old African American male, in the use of force that the department describes as the arm technique. The use of force was determined to be justified after a department investigation.

145. On January 26, 2016 a Officer with the Missouri City Police Department utilized use of force against a 38 year old African American male, in the use of force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

146. On February 1, 2016 a Officer with the Missouri City Police Department utilized use of force against a 23 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

147. On February 1, 2016 a Officer with the Missouri City Police Department utilized use of force against a 23 year old African American male, in the form of

displaying a firearm. The use of force was determined to be justified after a department investigation.

148. On February 1, 2016 a Officer with the Missouri City Police Department utilized use of force against a 23 year old African American female, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

149. On February 3, 2016 a Officer with the Missouri City Police Department utilized use of force against a 42 year old African American male in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

150. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

151. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

152. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

153. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

154. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

155. On February 6, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a internal affairs investigation.

156. On February 22, 2016 a Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the form of using a ECW device to execute a drive stun maneuver. The use of force was determined to be justified after a internal affairs investigation.

157. On February 22, 2016 a Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the form of using a ECW device to execute a drive stun maneuver. The use of force was determined to be justified after a department investigation.

158. On March 4, 2016 a Officer with the Missouri City Police Department utilized use of force against a 23 year old African American male, in a technique

characterized by the department as hard hands. The use of force was determined to be justified after a department investigation.

159. On March 4, 2016 an Officer with the Missouri City Police Department utilized use of force against a 23 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

160. On March 19, 2016 an Officer with the Missouri City Police Department utilized force against a 29 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

161. On March 25, 2016 an Officer with the Missouri City Police Department utilized force against a 55 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

162. On March 25, 2016 an Officer with the Missouri City Police Department utilized force against a 55 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

163. On March 25, 2016 an Officer with the Missouri City Police Department utilized force against a 55 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

164. On March 31, 2016 an officer with the Missouri City Police Department utilized force against a 35 year old African American male, in the form of pointing a firearm twice. The use of force was determined to be justified after a department investigation.

165. On March 31, 2016 an officer with the Missouri City Police Department utilized force against a 35 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

166. On March 31, 2016 an officer with the Missouri City Police Department utilized force against a 35 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

167. On March 31, 2016 an officer with the Missouri City Police Department utilized force against a 35 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

168. On April 11, 2016 an officer with the Missouri City Police Department utilized force against a 15 year old African American female, in the form of grabbing and in a technique characterized by the department as hard hands. The use of force was determined to be justified after a department investigation.

169. On April 13, 2016 an officer with the Missouri City Police Department utilized force against a 20 year old African American male, in the form of pointing

a firearm. The use of force was determined to be justified after a department investigation.

170. On April 29, 2016 an officer with the Missouri City Police Department utilized force against a 14 year old African American male, in the form of threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

171. On May 2, 2016 an officer with the Missouri City Police Department utilized force against a 30 year old African American male, in the form of deploying the ECW device. The use of force was determined to be justified after a department investigation.

172. On May 13, 2016 an officer with the Missouri City Police Department utilized force against a 26 year old African American male, in the form of deploying the ECW device and threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

173. On May 13, 2016 an officer with the Missouri City Police Department utilized force against a 26 year old African American male, in the form of deploying the ECW device and in the use of force that the department describes as other. The use of force was determined to be justified after a department investigation.

174. On May 24, 2016 an officer with the Missouri City Police Department utilized force against a 21 year old African American male, in the form of deploying the ECW device. The use of force was determined to be justified after a department investigation.

175. On May 28, 2016 an officer with the Missouri City Police Department utilized force against a 25 year old African American male, in the form of threatening the use of a ECW Device and displaying a firearm. The use of force was determined to be justified after a department investigation.

176. On May 31, 2016 an officer with the Missouri City Police Department utilized force against a 16 year old African American male, in the form of

displaying a firearm. The use of force was determined to be justified after a department investigation.

177. On June 1, 2016 an officer with the Missouri City Police Department utilized force against a 35 year old African American male, in the form of grabbing and threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

178. On June 5, 2016 an officer with the Missouri City Police Department utilized force against a 34 year old African American male, in the form of threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

179. On June 19, 2016 an officer with the Missouri City Police Department utilized force against a 30 year old African American male, in the form of grabbing. The use of force was determined to be justified after a department investigation.

180. On June 19, 2016 an officer with the Missouri City Police Department utilized force against a 30 year old African American male, in the form of grabbing. The use of force was determined to be justified after a department investigation.

181. On July 4, 2016 an officer with the Missouri City Police Department utilized force against a 19 year old African American male, in the form of threatening the use of a ECW Device. The use of force was determined to be justified after a department investigation.

182. On July 8, 2016 an officer with the Missouri City Police Department utilized force against a 20 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

183. On July 9, 2016 an officer with the Missouri City Police Department utilized force against a 25 year old African American male, in the form of tackling. The use of force was determined to be justified after a department investigation.

184. On July 9, 2016 an officer with the Missouri City Police Department utilized force against a 25 year old African American male, in the form of threatening the use of a ECW Device and in the use of force that the department describes as other. The use of force was determined to be justified after a department investigation.

185. On July 9, 2016 an officer with the Missouri City Police Department utilized force against a 25 year old African American male, in the form of grabbing and another technique used by the department known as ARM. The use of force was determined to be justified after a department investigation.

186. On July 15, 2016 an officer with the Missouri City Police Department utilized force against a 23 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

187. On July 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American female, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

188. On July 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

189. On July 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

190. On July 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

191. On July 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the form of

pointing a firearm. The use of force was determined to be justified after a department investigation.

192. On July 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

193. On July 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

194. On July 20, 2016 a Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male, in the form of using a ECW threat. The use of force was determined to be justified after a department investigation.

195. On July 24, 2016 a Officer with the Missouri City Police Department utilized use of force against a 19 year old African American female, in the use of force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

196. On July 24, 2016 a Officer with the Missouri City Police Department utilized use of force against a 19 year old African American female, in the use of force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

197. On August 09, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

198. On August 27, 2016 a Officer with the Missouri City Police Department utilized use of force against a 25 year old African American male, in a technique characterized by the department as hard hands and grabbing. The use of force was determined to be justified after a department investigation.

199. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 34 year old African American male, in the form of using a ECW device to execute a drive stun maneuver. The use of force was determined to be justified after a department investigation.

200. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 36 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

201. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 14 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

202. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 14 year old African American male, in the form of

threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

203. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 34 year old African American male, in the use of force that the department describes as grabbing and handcuffing. The use of force was determined to be justified after a department investigation.

204. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 36 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

205. On September 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 14 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

206. On September 03, 2016 a Officer with the Missouri City Police Department utilized use of force against a 20 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

207. On September 16, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

208. On September 16, 2016 a Officer with the Missouri City Police Department utilized use of force against a 25 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

209. On September 16, 2016 a Officer with the Missouri City Police Department utilized use of force against a 25 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

210. On September 16, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the use of force that the department describes as grabbing and pressure point. The use of force was determined to be justified after a department investigation.

211. On September 16, 2016 a Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the use of force that the department describes as hobbled and handcuffed. The use of force was determined to be justified after a department investigation.

212. On September 17, 2016 a Officer with the Missouri City Police Department utilized use of force against a 35 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

213. On September 17, 2016 a Officer with the Missouri City Police Department utilized use of force against a 35 year old African American male, in the form of

pointing a firearm. The use of force was determined to be justified after a department investigation.

214. On September 17, 2016 a Officer with the Missouri City Police Department utilized use of force against a 15 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

215. On September 17, 2016 a Officer with the Missouri City Police Department utilized use of force against a 15 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

216. On September 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 41 year old African American male, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

217. On September 18, 2016 a Officer with the Missouri City Police Department utilized use of force against a 41 year old African American male, in the form of deploying an ECW device. The use of force was determined to be justified after a department investigation.

218. On September 21, 2016 a Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

219. On October 03, 2016 a Officer with the Missouri City Police Department utilized use of force against a 31 year old African American male, in the form of threatening the use of a ECW device. The use of force was determined to be justified after a department investigation.

220. On November 06, 2016 a Officer with the Missouri City Police Department utilized use of force against a 36 year old African American male, in the use of force that the department describes as grabbing and a technique characterized as

pressure point. The use of force was determined to be justified after a department investigation.

221. On November 09, 2016 a Officer with the Missouri City Police Department utilized use of force against a 38 year old African American male, in the use of force that the department describes as grabbing and a technique characterized as a leg sweep. The use of force was determined to be justified after a department investigation.

222. On November 09, 2016 a Officer with the Missouri City Police Department utilized use of force against a 38 year old African American male, in the use of force that the department describes as grabbing and a technique characterized as a leg sweep. The use of force was determined to be justified after a department investigation.

223. On November 17, 2016 a Officer with the Missouri City Police Department utilized use of force against a 17 year old African American female, in the use of force that the department describes as grabbing and another technique that is not

characterized. The use of force was determined to be justified after a department investigation.

224. On November 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 20 year old African American female, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

225. On November 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 20 year old African American female, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

226. On November 19, 2016 a Officer with the Missouri City Police Department utilized use of force against a 20 year old African American female, in the form of displaying a firearm. The use of force was determined to be justified after a department investigation.

227. On November 21, 2016 a Officer with the Missouri City Police Department utilized use of force against a 33 year old African American male, in the use of

force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

228. On November 28, 2016 a Officer with the Missouri City Police Department utilized use of force against a 24 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

229. On December 02, 2016 a Officer with the Missouri City Police Department utilized use of force against a 47 year old African American male, in the use of force that the department describes as grabbing. The use of force was determined to be justified after a department investigation.

230. On December 02, 2016 an officer with the Missouri City Police Department utilized force against a 47 year old African American female, in the use of force that the department describes as handcuffing. The use of force was determined to be justified after a department investigation.

231. On December 2, 2016 an Officer with the Missouri City Police Department utilized use of force against a 47 year old African American female, in the form of improper use of handcuffs. The use of force was determined to be justified after a department investigation.

232. On December 11, 2016 an Officer with the Missouri City Police Department utilized use of force against a 16 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

233. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 22 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

234. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

235. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of pointing a firearm. The use of force was determined to be justified after a department investigation.

236. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 22 year old African American male, in the form of firearm displayed. The use of force was determined to be justified after a department investigation.

237. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of firearm displayed. The use of force was determined to be justified after a department investigation.

238. On December 12, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of

firearm displayed. The use of force was determined to be justified after a department investigation.

239. On December 18, 2016 an Officer with the Missouri City Police Department utilized use of force against a 29 year old African American male, in the ECW threat. The use of force was determined to be justified after a department investigation.

240. On December 24, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American female, in the form of grabs. The use of force was determined to be justified after a department investigation.

241. On December 25, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of ECW threat. The use of force was determined to be justified after a department investigation.

242. On December 25, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of grabs. The use of force was determined to be justified after a department investigation.

243. On December 25, 2016 an Officer with the Missouri City Police Department utilized use of force against a 18 year old African American male, in the form of what the department describes as join. The use of force was determined to be justified after a department investigation.

244. On December 30, 2016 an Officer with the Missouri City Police Department utilized use of force against a 13 year old African American female, in the form of pointed firearm. The use of force was determined to be justified after a department investigation.

245. Chief Berezon was aware of these incidents, as well as other complaints in which Officer Wiley and Nelson used excessive force against an African Americans, but did not provide better supervision to such officers.

## **CLAIMS**

### **42 U.S.C. § 1983**

**FOURTEENTH AND FOURTH AMENDMENT-EXCESSIVE FORCE, EQUAL  
PROTECTION, AND INADEQUATE MEDICAL CARE**

246. The foregoing paragraphs are incorporated herein as if quoted verbatim.
247. At all times relevant hereto, Plaintiff had an inalienable and fundamental liberty interest protected by the Constitution.
248. Defendant's acts and omissions with respect to Plaintiff's conditions of confinement were:
- a. deliberately indifferent;
  - b. a violation of the Fourth Amendment's right to be free from excessive force, unusual punishment, and denied his right to adequate medical care, as a pre-trial detainee; and
  - c. a violation of due process of law as guaranteed by the Fourteenth Amendment;
249. Defendant, Missouri City's policies and procedures of allowing its officers to utilize excessive force, delaying and denying medical care, and training officers not to intervene when another officer is utilizing excessive force were the proximate cause of Mr. Harper's injuries.
250. Mr. Harper had the right to be free from excessive force.

251. The City of Missouri City's officials violated Mr. Harper's right to be free from excessive force because of their failure to train and supervise its officers which resulted in the promoted, adopted and promulgated a policy of allowing its arresting officers to utilize excessive force when arresting a suspect who is compliant, making no attempt to flee or resist.

252. And a practice and custom of discouraging interfering to prevent others from engaging in the use of excessive force.

253. The City of Missouri City's officials Chief Mike Berezin, M.B. Wiley, and Greg Nelson, were deliberately or recklessly violated Mr. Harper's civil rights under the color of law because they:

254. Allowed the excessive force against Mr. Harper when he was struck by a taser gun used by Officer Wiley;

255. These deprivations of Mr. Harper's civil rights under color of law occurred despite Defendant's' knowledge concerning Mr. Harper's:

- a. Compliance, and
- b. Not resisting arrest as alleged<sup>2</sup>.

256. The City of Missouri City's officials drew or must have drawn the inference that Mr. Harper constitutional right to be free from excessive force was secondary

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<sup>2</sup> Resisting arrest charges against Plaintiff were dismissed.

to the desires of the violators of the constitutional rights of others because it was the city's policy, procedure, custom or practice to encourage officers, as Nelson in this case, to refuse to intervene when another officer is clearly engaging in excessive force.

257. The City of Missouri City's officials were actually aware that Officer M.B. Wiley used excessive force relating to the apprehension and arrest of Mr. Harper.

258. The City of Missouri City's officials drew or must have drawn the inference that Mr. Harper's need for medical care after the excessive force was open and obvious based on his gaping head wound, his numerous complaints that his head was bleeding , and his inability to stay awake which was a early symptom of a concussion.

259. The City of Missouri City's officials drew or must have drawn the inference that Mr. Harper required immediate medical care based on his gaping head wound.

260. Therefore, Defendant The City of Missouri City knew of and deliberately disregarded an excessive risk of harm to Mr. Harper's right to be free from excessive force by adopting the actions of its Officer Wiley and Officer Greg Nelson.

261. Defendants' adoption and promotion of the policy and practice to allow its officers to also deliberately indifferent to Mr. Harper's constitutional right to be free from excessive force.

262. Defendants' acts are repugnant to the conscience of mankind, thereby exposing them to liability.

263. Defendant The City of Missouri City's officials are responsible for Mr. Harper's injuries because The City of Missouri City's officials policy-makers were sufficiently aware that its policies were defective, incomplete, or routinely ignored by its officers (at least) to the extent that they facilitated or permitted the excessive force against Mr. Harper.

264. Defendant The City of Missouri City officials are responsible for Mr. Harper's injuries because they were sufficiently aware the failure to train and supervise its officers as it relates to use of force when a person is compliant, not resisting or attempting to flee.

265. The danger(s) involved were obvious and the resulting substantial harms were certain based on the failure to train and supervise the officers.

266. Defendants, The City of Missouri City, Wiley, and Nelson, were aware of facts from which they drew (or should have drawn) an inference that there was a substantial risk of serious harm to Mr. Harper or someone similarly situated.

267. Defendants, The City of Missouri City, Wiley, and Nelson action in promoting the excessive force against Mr. Harper evidence a custom, policy, or procedure of excessive force, and deliberate indifference.

268. Additionally and/or alternatively, Defendants failures to reasonably address Mr. Harper's open and obvious medical needs is evidence the denial of medical care to persons who clearly require it.

269. Defendant was on notice of Mr. Harper's injuries and failed to address them but another similarly situated Sheriff's department wouldn't even allow Mr. Harper in to their jail until he was examined at the hospital.

270. That examination resulted in him getting numerous stitches in his head.

271. Defendant had notice that their policies and procedures concerning the medical care of pre-trial detainees were deficient.

272. Additionally, Defendant had notice that their policies and procedures concerning pre-trial detainees were deficient.

273. Therefore, the dangers of substantial injury to Mr. Harper (and others similarly situated) were certain to occur because Defendants had notice: (a) of Mr. Harper's open and obvious medical condition, since Nelson and Wiley created it; (b) of Mr. Harper's clear need for medical care; and (c) that the failure to provide access to medical care constitutes a deprivation of access to basic medical care.

274. Defendant The City of Missouri City is liable because they either (a) had a policy, procedure, or custom of ignoring open and obvious constitutional violations, namely excessive force; (b) made a conscious decision to ignore a policy, procedure, or custom that required accommodation of such disabilities; or (c) did have a policy, procedure, or custom that required denial of medical care to pre-trial detainees after excessive force was used against them in an effort to save money.

275. Defendant Greg Nelson, is liable because he was deliberately indifferent to Mr. Harper's constitutional right to be free from excessive force when he stood by and allowed the excessive force by M.B. Wiley to occur and continue without intervening.

276. Defendant, Greg Nelson's action as a bystander while M.B. Wiley continued to strike Mr. Harper and failure to intervene was the moving force and a proximate cause of Mr. Harper's injuries.

277. Defendant M.B. Wiley is liable because he was deliberately indifferent to Mr. Harper's constitutional right to be free from excessive force.

278. Defendant, M.B. Wiley's action was the moving force and a proximate cause of Mr. Harper's injuries.

279. As a consequence, Defendants are liable because they were objectively and deliberately indifferent to Mr. Harper's medical needs.

**STATE LAW CLAIM- ASSAULT AND BATTERY**

280. Under Texas law, the parallel cause of action for excessive force is a cause of action for assault and battery. TEX. PENAL CODE ANN. § 22.01. Consequently, Plaintiffs allege an alternative pendent State law claim for assault and battery against Wiley , incorporating the allegations contained in Paragraphs herein.

281. Officer Wiley committed an assault upon Mr. Harper when he intentionally, knowingly, and/or recklessly caused John to be shot. Gardiner's assault conduct was committed intentionally, knowingly, and/or recklessly, and was the proximate cause of physical and emotional injuries to the Plaintiffs. Said injuries were the direct and immediate consequence of Officer Wiley 's wrongful acts and a natural and direct result of the assault. His unreasonable use of force was not necessary under the circumstances.

**COUNT 2 -DAMAGES**

282. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered injuries and damages.

283. Physical Impairment

284. Mental Anguish

285. Plaintiff therefore seeks compensatory damages (including legal fees, lost future earnings, lost wages, and mental distress), presumed damages, nominal damages, and punitive damages.

**ATTORNEY FEES**

286. After prevailing herein, Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. § 1988.

**PRAYER**

For these reasons, Plaintiff asks for judgment against Defendant for the following:

- (a) compensatory damages;
- (b) presumed damages;
- (c) nominal damages;
- (d) reasonable attorney fees;
- (e) costs of suit; and
- (f) all other relief to which Plaintiff shows herself entitled, both at law and in equity.

The Lewis Law Group, PLLC

/s/ U. A. Lewis

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Attorney for the Plaintiff

### **CERTIFICATE OF SERVICE**

This is to certify that on the date of this filing, November 12, 2018, a true and correct copy of the above and foregoing document was served on each attorney of record VIA ECF.

By: /s/ Shardae Parker

Shardae Parker